

**Categorical Exclusion Documentation Format for Actions Other Than Hazardous  
Fuels and Fire Rehabilitation Actions  
Nitti Road Right-of-Way  
DOI-BLM-AZ-C030-2014-0008-CX**

**A. Background**

**BLM Office:** Lake Havasu Field Office

**Lease/Serial/Case File No.:** AZA 33960

**Proposed Action Title/Type:** Road right-of-way to private property near Wenden, Arizona

**Location of Proposed Action:**

Gila & Salt River Meridian, Arizona  
T. 6 N., R. 12 W.,  
sec. 28, W½SE¼.

**Description of Proposed Action:**

On February 16, 2007, Mr. Nick Nitti filed a right-of-way (ROW) application to build a road to private property. This ROW would be approximately 1280 feet long by 35 feet wide, and contains approximately 1.028 acres. The road will be maintained by applicant on an as needed basis and will not be wider than 35 feet. On February 11, 2014 during a field visit with the applicant and an El Paso Natural Gas/Kinder Morgan (EPNG/KM) land agent about the location of the ROW, it was brought to BLM's notice that an EPNG/KM pipeline, AZPHX 086056, crosses the westerly corner of Mr. Nitti's property. Mr. Nitti has a gate to his property right next to AZPHX 086056. On March 6, 2014, per a phone conversation with Mr. Nitti, he requested to use the existing El Paso pipeline road with EPNG/KM's concurrence instead of constructing a new road to his property. On March 20, 2014, BLM Lake Havasu received Mr. Nitti's request to amend his application to use the existing EPNG/KM pipeline, AZPHX 086056 ROW to access his private property.

Upon approval, the ROW AZA 33960 will be for 19 years and 8 months, and will expire on December 31, 2033.

This ROW would be approximately 1,600' long by 30' wide, and contains approximately 1.101 acres.

**B. Land Use Plan Conformance**

Land Use Plan (LUP) Name: *Lake Havasu Field Office Resource Management Plan*

Date Approved/Amended: May 10, 2007

The proposed action is in conformance with the LUP, even though it is not specifically provided for, because it is clearly consistent with the following LUP decision(s) (objectives, terms, and conditions): Lake Havasu Field Office may allow the use of the public lands or interests in lands through issuance of ROWs, leases, and permits. The types of uses that would be authorized by a ROW issued pursuant to Title 5 FLPMA would include access roads, power lines, telephone lines, fiber optic systems, communications facilities, and so forth. Examples of uses authorized pursuant to the Mineral Leasing Act include crude oil pipelines and oil and gas pipelines. Typical uses authorized by permits would include filming and establishing and maintaining apiary sites.

**C: Compliance with NEPA:**

The Proposed Action is categorically excluded from further documentation under the National Environmental Policy Act (NEPA) in accordance with 516 DM 2, Appendix 4, E. Realty (17): "Grant of a short rights-of-way for utility service or terminal access roads to an individual residence, outbuilding, or water well."

This categorical exclusion is appropriate in this situation because there are no extraordinary circumstances potentially having effects that may significantly affect the environment. The proposed action has been reviewed, and none of the extraordinary circumstances described in 516 DM2 apply.

I considered the possibility of significant impacts by authorizing this action, but there are none as demonstrated by the signatures in Attachment 1.

**D: Signature**

Authorizing Official: Jayson Barangan for K.Liebhauser AUTHENTICATED by L. Stapp

Date: 3/25/2014

Kimber Liebhauser

Field Manager, Lake Havasu Field Office

**Contact Person**

For additional information concerning this CX review, contact Realty Specialty Lisa Stapp, 2610 Sweetwater Avenue, Lake Havasu City, Arizona 86406, (928) 505-1260.

**Note:** A separate decision document must be prepared for the action covered by the CX. See Attachment 2.

## Attachment 1: Extraordinary Circumstances Review

| Extraordinary Circumstances  | Comment ( <i>Yes or No with supporting Rationale</i> ) |
|--|--|
| 1. Have significant effects on public health or safety.  | No   |
| 2. Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (Executive Order 11990); floodplains (Executive Order 11988) national monuments; migratory birds; and other ecologically significant or critical areas. | No   |
| 3. Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA Section 102(2)(E)].  | No   |
| 4. Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.   | No   |
| 5. Establishes a precedent for future action or represents a decision in principle about future actions with significant environmental effects.  | No   |
| 6. Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.   | No   |
| 7. Have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by either the bureau or office.   | No   |
| 8. Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have significant impacts on designated Critical Habitat for these species.  | No   |
| 9. Violate a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment.   | No   |
| 10. Have a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898).   | No   |
| 11. Limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (Executive Order 13007).  | No   |
| 12. Contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and Executive Order 13112).  | No   |

## Approval and Decision Attachment 2

**Compliance and assignment of responsibility:** Lands & Resources

**Monitoring and assignment of responsibility:** Lands & Resources

**Review:** We have determined that the proposal is in accordance with the categorical exclusion criteria and that it would not involve any significant environmental effects. Therefore, it is categorically excluded from further environmental review.

Prepared by: L. Stapp AUTHENTICATED by L.Stapp Date: 3/25/2014  
Realty Specialist Lisa Stapp  
Project Lead

Reviewed by: \_\_\_\_\_ Date: \_\_\_\_\_  
David Daniels  
NEPA Coordinator

Reviewed by: Amanda Dodson AUTHENTICATED by L.Stapp Date: 3/25/2014  
Amanda Dodson  
Assistant Field Manager-Lands & Resources

**Project Description:**

On February 16, 2007, Mr. Nick Nitti filed a right-of-way (ROW) application to build a road to private property. This ROW would be approximately 1280 feet long by 35 feet wide, and contains approximately 1.028 acres. The road will be maintained by applicant on an as needed basis and will not be wider than 35 feet. On February 11, 2014 during a field visit with the applicant and an El Paso Natural Gas/Kinder Morgan (EPNG/KM) land agent about the location of the ROW, it was brought to BLM's notice that an EPNG/KM pipeline, AZPHX 086056, crosses the westerly corner of Mr. Nitti's property. Mr. Nitti has a gate to his property right next to AZPHX 086056. On March 6, 2014, per a phone conversation with Mr. Nitti, he requested to use the existing El Paso pipeline road with EPNG/KM's concurrence instead of constructing a new road to his property. On March 20, 2014, BLM Lake Havasu received Mr. Nitti's request to amend his application to use the existing EPNG/KM pipeline, AZPHX 086056 ROW to access his private property.

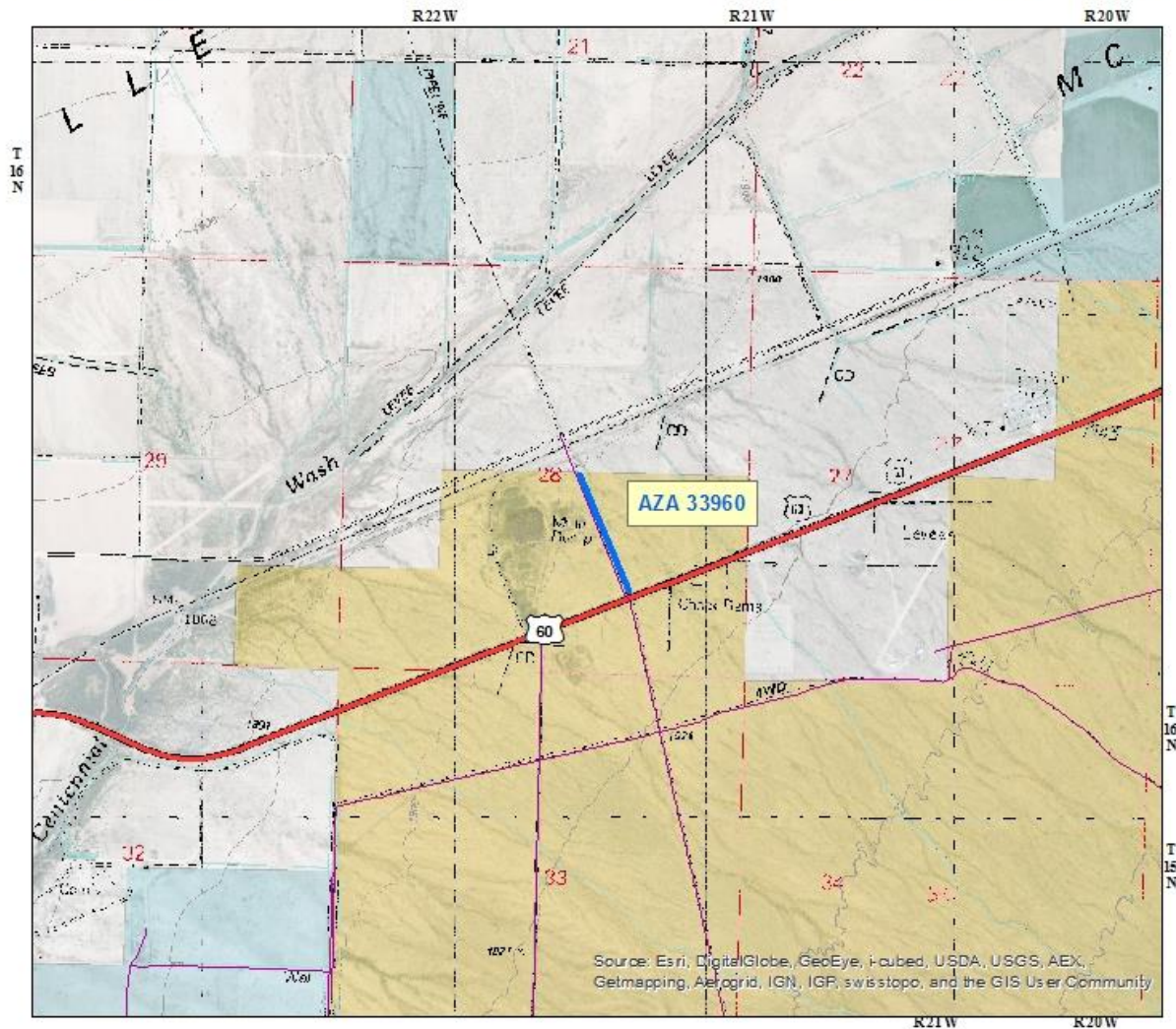
Upon approval, the ROW AZA 33960 will be for 19 years and 8 months, and will expire on December 31, 2034. This ROW would be approximately 1,600' long by 30' wide, and contains approximately 1.101 acres.

**Decision:** Based on a review of the project described above and field office staff recommendations, I have determined that the project is in conformance with the land use plan and is categorically excluded from further environmental analysis. It is my decision to approve the action as proposed, with the following stipulations (if applicable).

**Approved By:** Jayson Barangan for K.Liebhauser AUTHENTICATED by L. Stapp    Date: 3/25/2014  
**Kimber Liebhauser**  
**Field Manager, Lake Havasu Field Office**

Exhibits:

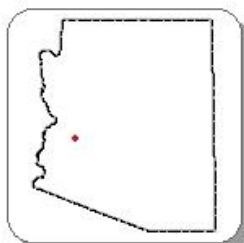
- A. Map
- B. Stipulations
- C. Desert Tortoise Guidelines



## Legend

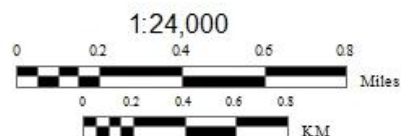
- |   |                              |
|---|------------------------------|
| Bureau of Land Management (BLM)         | BLM Wilderness Area          |
| USFW Service, National Wildlife Refuges | USFW Service Wilderness Area |
| Indian Lands or Reservations            |                              |
| Private Lands                           |                              |
| State Lands                             |                              |

## Legend



United States Department of the Interior  
Bureau of Land Management  
Arizona State Office

Map created on Aug 14, 2009  
Land Status Updated February 20, 2007



**CAUTION:**  
Land ownership data is derived from less accurate data than the 1:24,000 scale base map. Therefore, land ownership may not be shown for parcels smaller than 40 acres, and land ownership lines may have plotting errors due to source data.

No warranty is made by the Bureau of Land Management for the use of the data for purposes not intended by the BLM.

### Stipulations

1. The Holder shall give written notice to the Bureau of Land Management (BLM) of any anticipated changes in the Plan of Development and management, and shall obtain approval from the BLM prior to initiating changes.
2. Actions other than those explicitly approved by the Bureau of Land Management, which result in impacts upon archaeological or historical resources, shall be subject to the provisions of the Archaeological Resources Protection Act of 1979 as amended and the Federal Land Policy and Management Act of 1976. These statutes protect cultural resources for the benefit of all Americans. As property of the United States, no person may, without authorization, excavate, remove, damage, or otherwise alter or deface any historic or prehistoric site, artifact or object of antiquity located on public lands.
3. The Holder shall immediately bring to the attention of the Lake Havasu Field Manager (or designated representative) any cultural resources (prehistoric/historic sites or objects) and/or paleontological resources (fossils) encountered during permitted operations and maintain the integrity of such resources pending subsequent investigation.
4. Care shall be taken not to disturb or destroy desert tortoises or their burros. Handling, collecting, damaging, or destroying desert tortoises are prohibited by Arizona State Statute. During all activity, special care should be given to watch for and avoid any desert tortoise that may be present within the project area. Any sightings of desert tortoise shall be immediately reported to the LHFO, Wildlife Biologist at (928) 505-1200. If a desert tortoise is endangered by any activity that activity shall cease until the desert tortoise moves out of harm's way on its own accord or is moved following the attached guidelines "Guidelines for Handling Sonoran Desert Tortoises Encountered on Development Projects" (Exhibit C).
5. All wildlife and migratory birds shall be observed from a distance. Any injured wildlife shall be reported to Arizona Game & Fish Department at (928) 342-0091. Harassment of wildlife or destruction of private and public improvements, such as fences and gates, is prohibited. The taking of any threatened and endangered plant or animal is prohibited.
6. State protected plant species (all cactus, ocotillo and native trees) shall be avoided; if they cannot be avoided they will be salvaged and replanted during reclamation. The Holder shall report all State protected species destroyed or damaged to the LHFO Wildlife Biologist at (928) 505-1200. All personnel should report any sightings of desert tortoise, bighorn sheep, and other wildlife species to the LHFO Biologist.
7. No hazardous material, substance, or hazardous waste, (as these terms are defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, *et seq.*, or the Resource Conservation and Recovery Act, 42 U.S.C. 6901, *et seq.*) shall be used, produced, transported, released, disposed of, or stored within the right-of-way area at any time by the Holder. The Holder shall immediately report any release of hazardous substances (leaks, spills, etc.) caused by the Holder or third parties in excess of the reportable quantity as required by federal, state, or local laws and regulations. A copy of any report required or requested by any federal, state or local government agency as a result of a reportable release or spill of any hazardous substances shall be furnished to the Authorized Officer concurrent with the filing of the reports to the involved federal, state or local government agency.

The Holder shall immediately notify the Authorized Officer of any release of hazardous substances, toxic substances, or hazardous waste on or near the right-of-way potentially affecting the right-of-way of which the Holder is aware.

As required by law, Holder shall have responsibility for and shall take all action(s) necessary to fully remediate and address the hazardous substance(s) on or emanating from the right-of-way.

8. The Holder shall comply with all applicable local, state, and federal air, water, hazardous substance, solid waste, or other environmental laws and regulations, existing or hereafter enacted or promulgated. To the full extent permissible by law, the Holder agrees to indemnify and hold harmless, within the limits, if any, established by state law (as state law exists on the effective date of the right-of-way), the United States against any liability arising from the Holder's use or occupancy of the right-of way, regardless of whether the Holder has actually developed or caused development to occur on the right-of-way, from the time of the issuance of this right-of-way to the Holder, and during the term of this right-of-way. This agreement to indemnify and hold harmless the United States against any liability shall apply without regard to whether the liability is caused by the Holder, its agents, contractors, or third parties. If the liability is caused by third parties, the Holder will pursue legal remedies against such third parties as if the Holder were the fee owner of the right-of-way.

Notwithstanding any limits to the Holder's ability to indemnify and hold harmless the United States which may exist under state law, the Holder agrees to bear all responsibility (financial or other) for any and all liability or responsibility of any kind or nature assessed against the United States arising from the Holder's use or occupancy of the right-of way regardless of whether the Holder has actually developed or caused development to occur on the right-of-way from the time of the issuance of this right-of-way to the Holder and during the term of this right-of-way.

9. The Holder shall not violate applicable air standards or related facility siting standards established by or pursuant to applicable federal, state, or local laws or regulations. The Holder shall be responsible for dust abatement within the limits of the right-of-way and is responsible for obtaining all necessary permits from appropriate authorities for acceptable dust abatement and control methods (e.g., water, chemicals). The Holder shall be solely responsible for all violations of any air quality permit, law or regulation, as a result of its action, inaction, use or occupancy of the right-of-way.

Notwithstanding whether a violation of any air quality permit, law or regulation results, the Holder would cooperate with the Authorized Officer in implementing and maintaining reasonable and appropriate dust control methods in conformance with law and appropriate to the circumstances at the sole cost of the Holder.

Prior to relinquishment, abandonment, or termination of this right-of-way, the Holder shall apply reasonable and appropriate dust abatement and control measures to all disturbed areas. The abatement and measures shall be designed to be effective over the long-term (e.g., rock mulch or other means) and acceptable to the Authorized Officer.

10. Use of pesticides shall comply with the applicable Federal and state laws. Pesticides shall be used only in accordance with their registered uses and within limitations imposed by the Secretary of the Interior. Prior to the use of pesticides, the Holder shall obtain from the Authorized Officer written approval of a plan showing the type and quantity of material to be used, pest(s) to be controlled, method of application, location of storage and disposal of containers and any other information deemed necessary by the Authorized Officer. The plan shall be submitted no later than December 1 of any calendar year that covers the proposed activities for the next fiscal year. Pesticides shall not be permanently stored on public lands authorized for use under this right-of-way.
11. In the event that the public land underlying the right-of-way encompassed in this right-of-way, or a portion thereof, is conveyed out of Federal ownership and administration of the right-of-way or the land underlying the right-of-way is not being reserved to the United States in the patent/deed and/or the right-of-way is not within a right-of-way corridor being reserved to the United States in the patent/deed, the United States waives any right it has to administer the right-of-way, or portion thereof, within the conveyed land under Federal laws, statutes, and regulations, including the regulations at 43 CFR Part [2880], including any rights to have the Holder apply to BLM for amendments, modifications, or assignments and for BLM to approve or recognize such amendments, modifications, or assignments. At the time of conveyance, the



patentee/grantee, and their successors and assigns, shall succeed to the interests of the United States in all matters relating to the right-of-way, or portion thereof, within the conveyed land and shall be subject to applicable State and local government laws, statutes, and ordinances. After conveyance, any disputes concerning compliance with the use and the terms and conditions of the right-of-way shall be considered a civil matter between the patentee/and the Holder.

GUIDELINES FOR HANDLING SONORAN DESERT TORTOISES  
ENCOUNTERED ON DEVELOPMENT PROJECTS  
Arizona Game and Fish Department  
Revised October 23, 2007

The Arizona Game and Fish Department (Department) has developed the following guidelines to reduce potential impacts to desert tortoises, and to promote the continued existence of tortoises throughout the state. These guidelines apply to short-term and/or small-scale projects, depending on the number of affected tortoises and specific type of project.

The Sonoran population of desert tortoises occurs south and east of the Colorado River. Tortoises encountered in the open should be moved out of harm's way to adjacent appropriate habitat. If an occupied burrow is determined to be in jeopardy of destruction, the tortoise should be relocated to the nearest appropriate alternate burrow or other appropriate shelter, as determined by a qualified biologist.

Tortoises should be moved less than 48 hours in advance of the habitat disturbance so they do not return to the area in the interim. Tortoises should be moved quickly, kept in an upright position parallel to the ground at all times, and placed in the shade. Separate disposable gloves should be worn for each tortoise handled to avoid potential transfer of disease between tortoises. Tortoises must not be moved if the ambient air temperature exceeds 40° Celsius (105° Fahrenheit) unless an alternate burrow is available or the tortoise is in imminent danger.

A tortoise may be moved up to one-half mile, but no further than necessary from its original location. If a release site, or alternate burrow, is unavailable within this distance, and ambient air temperature exceeds 40° Celsius (105° Fahrenheit), the Department should be contacted to place the tortoise into a Department-regulated desert tortoise adoption program. Tortoises salvaged from projects which result in substantial permanent habitat loss (e.g. housing and highway projects), or those requiring removal during long-term (longer than one week) construction projects, will also be placed in desert tortoise adoption programs. Managers of projects likely to affect desert tortoises should obtain a scientific collecting permit from the Department to facilitate temporary possession of tortoises. Likewise, if large numbers of tortoises (>5) are expected to be displaced by a project, the project manager should contact the Department for guidance and/or assistance.

Please keep in mind the following points:

These guidelines do not apply to the Mojave population of desert tortoises (north and west of the Colorado River). Mojave Desert tortoises are specifically protected under the Endangered Species Act, as administered by the U.S. Fish and Wildlife Service.

These guidelines are subject to revision at the discretion of the Department. We recommend that the Department be contacted during the planning stages of any project that may affect desert tortoises.